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Court of Appeals
Division II
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NO. 53328-6-II

THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION TWO

K.M.,

Appellant,

v.

The Honorable JUDITH RAMSEYER,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. The State has never identified any provision of any order which K.M. violated. Moreover the State does not identify any provision in any order notifying K.M. that she faces jail for failure to comply.

The contempt authority under RCW 13.34.165 is limited to the “[f]ailure by a party to comply with an order entered under this chapter.” The Department of Children, Youth and Families (“DCYF” or “the Department) has never identified any provision of any order which K.M. has violated. DCYF did not identify any such violation in its motions for contempt and it has not a single one in response to K.M. brief on appeal.

Contempt is the “intentional disobedience of a lawful court order.” *King v. Department of Social and Health Services*, 110 Wn.2d 793, 797, 756 P.2d 1303 (1988).

. . . civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding *upon notice and an opportunity to be heard*.

International Union, United Mine Workers of America. v. Bagwell, 512 U.S. 821, 827, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994). Due process requires a person have notice that the failure to comply with some provision of a court order may result in a finding of contempt. *Smith v. Whatcom County District Court*, 147 Wn.2d 98, 113, 52 P.3d 485 (2002). In short, a person must know what they are required to do or not do and that their failure to do so may result in a finding of contempt.

K.M. has not violated the provisions of any court order. The repeated contempt findings, and the lingering threat of future sanctions, are unlawful.

2. Because DCYF and the juvenile court may continue employing similarly unlawful procedures to arrest K.M., the issues is not moot, K.M. is under restraint, and K.M. is entitled to a writ of habeas corpus.

Washington courts have long recognized that “restraint” for purposes of relief by writ of habeas corpus is far broader than physical confinement. *Monohan v. Burdman*, 84 Wn.2d 922, 925, 530 P.2d 334 (1975) (person still under

restraint for purposes of challenging denial of release to parole even when released during pendency of petition); *In re Mines*, 146 Wn.2d 279, 284, 45 P.3d 535 (2002) (because revocation of parole could be considered in future proceedings petitioner still restrained despite release to parole during pendency of petition); *Born v. Thompson*, 154 Wn.2d 749, 763-64, 117 P.3d 1098 (2005) (risk that competency determination may factor into subsequent competency or commitment determinations constituted restraint such that habeas petition was not moot).

So long as K.M. faces “the possibility of reincarceration” her habeas petition is not moot. *T.B. v. CPC Fairfax Hospital*, 129 Wn.2d 439, 447, 918 P.2d 497 (1996) (citing *In re LaBelle*, 107 Wn.2d 196, 200, 728 P.2d. 138 (1986)). In *T.B.* a child filed a habeas corpus petition challenging the legality of her involuntary confinement in a hospital by her parents and hospital staff. *Id.* at 441. While the petition was pending the child escaped from the hospital. *Id.* at 447. The court concluded the matter was not moot because of the risk of

reconfinement. *Id.* The court then granted a writ of habeas corpus. *Id.* at 454. K.M. continues to face the risk of reincarceration, as demonstrated by the pattern of arrest and jailing here.

DCYF's response to *T.B.* is to simply ignore it. Instead, DCYF insists the K.M. no longer faces the risk of jail because new statute requires additional protections beyond notice and an opportunity to be heard before a child may be jailed. Brief of Respondent at 11-12. To be clear, the statute still permits a court to arrest neglected children.

And in fact, the amended statute actual broadens the scenarios in which K.M. may be subject to contempt findings. Previously RCW 13.34.165 permitted a contempt finding only where a party violated "a placement order." Former RCW 13.34.165(5); Laws 2019, ch. 312, § 11. Now, however, a court may exercise its contempt authority any time a child "is missing from care." RCW 13.34.165(5). That expansion of authority vastly increases K.M.'s exposure to being arrested

and sanctioned and casts grave constitutional doubt on the validity of any subsequent contempt process.

As noted previously and in K.M.'s initial brief, contempt is by definition the violation of a court order, yet the amended statute eliminates that. Contempt necessarily requires notice to a party that violation of an order may result in a finding of contempt, by delinking contempt from the violation of court order, the statute eliminates that constitutional prerequisite.

There is no constitutional foundation permitting the finding of a child in contempt simply for their failure to follow the wishes of agency in the absence of a court order that child do so. As is clear in this case, no order required K.M. to remain at any placement. Rather than cure any problem, the amended statute exacerbates them. K.M. still faces the prospect of rearrest based upon new contempt findings. K.M. is under restraint. *T.B.*, 129 Wn.2d at 447.

3. The recent changes in law demonstrate the important and public nature of the issue in this case, but they do not remedy the unlawful use of contempt sanctions against K.M.

Attorney General Bob Ferguson has recognized

[t]he “prolonged detention of children . . . in ‘prison-like conditions’ will have profound, long-term impacts on their mental and physical health.

[https://www.atg.wa.gov/news/news-releases/ag-ferguson-challenges-trump-s-attempt-remove-protections-immigrant-](https://www.atg.wa.gov/news/news-releases/ag-ferguson-challenges-trump-s-attempt-remove-protections-immigrant-children)

[children](https://www.atg.wa.gov/news/news-releases/ag-ferguson-challenges-trump-s-attempt-remove-protections-immigrant-children). Yet, here the attorney general insists there is no significant issue arising out of the routine misuse of contempt sanctions to repeatedly jail abused and neglected children in the State’s care. Such treatment of the most vulnerable children is plainly an important and public issue.

Former RCW 13.34.165 did not authorize K.M.’s repeated arrests and jailing for leaving a placement as the Department asserts. Brief of Respondent at 13. It authorized a finding of contempt for only for the actual violation the provision of an order. The state has yet to identify any such provision that K.M. violated. Yet the State believes the

statute nonetheless permitted the State to seek and the trial court to enter contempt orders. That misguided belief together with the Attorney General's own recognition of the lasting harm such action cause illustrates the public nature of the issue at stake.

4. K.M. is entitled to a writ of habeas corpus.

A person is entitled to a writ of habeas corpus to gain their immediate freedom from unlawful restraint.

F. CONCLUSION

K.M.'s restraint stemming from the repeated contempt findings is contrary to RCW 13.34.165 and violates due process. This Court should order the issuance of a writ of habeas corpus to free her from this unlawful restraint.

Respectfully submitted this 25^h day of October, 2019.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

THE HONORABLE JUDITH RAMSEYER,)
)
 Respondent,)
)
 v.)
)
 K.M.,)
)
 Juvenile Appellant.)

NO. 53328-6-II

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